

STATE OF MICHIGAN  
COURT OF APPEALS

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GREGG ALLEN SHAFFNER,

Plaintiff-Appellant,

v

ADDIE LOUISE SHAFFNER,

Defendant-Appellee.

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UNPUBLISHED

March 1, 2007

No. 265186

Oakland Circuit Court

Family Division

LC No. 04-697417-DO

Before: O’Connell, P.J., and Saad and Talbot, JJ.

PER CURIAM.

Plaintiff appeals a judgment of divorce. Specifically, he argues that the trial court erred in its property division on the grounds that there were no marital assets, defendant did not meet the statutory exceptions that allow the invasion of separate assets, and the trial court incorrectly considered the parties’ period of cohabitation when it distributed the assets. We affirm.

In reviewing a divorce action, this Court must first review the trial court’s findings of fact. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). Findings of fact, such as a trial court’s valuations of particular marital assets, will not be reversed unless clearly erroneous. *Stoudemire v Stoudemire*, 248 Mich App 325, 336-337; 639 NW2d 274 (2001). A finding is clearly erroneous if, after a review of the entire record, the reviewing court is left with the definite and firm conviction that a mistake has been made. *McNamara v Horner*, 249 Mich App 177, 182-183; 642 NW2d 385 (2002), after rem 255 Mich App 667; 662 NW2d 436 (2003). If the trial court’s findings of fact are upheld, this Court must decide whether the dispositive ruling was fair and equitable in light of those facts. *Sparks, supra* at 151-152. The dispositional ruling is discretionary and should be affirmed unless this Court is left with the firm conviction that the division was inequitable. *Id.*

The goal in distributing marital assets in a divorce proceeding is to reach an equitable distribution of property in light of all the circumstances. *McNamara, supra* at 188. To reach an equitable division, the trial court should consider the duration of the marriage, the contribution of each party to the marital estate, each party’s station in life, each party’s earning ability, each party’s age, health and needs, fault or past misconduct, and any other equitable circumstance. *Sparks, supra* at 158-160. The determination of relevant factors will vary with the circumstances of each case, and no one factor should be given undue weight. *Id.* at 158. The trial court must make specific findings regarding the factors it determines to be relevant. *Id.* at 159.

The distribution of property in a divorce is governed by statute. *Reeves v Reeves*, 226 Mich App 490, 493; 575 NW2d 1 (1997); MCL 552.1 *et seq.* The first consideration of the trial court is the determination of separate and marital estates. *Reeves, supra* at 493-494. “When apportioning marital property, the court must strive for an equitable division of increases in marital assets ‘that may have occurred between the *beginning* and the end of the marriage.’” *Id.* at 493 (quoting *Bone v Bone*, 148 Mich App 834, 838; 385 NW2d 706 (1986) (emphasis in original)); MCL 552.19.<sup>1</sup> Generally, under the doctrine of noninvasion of separate assets, a party “take[s] away from the marriage that party’s own separate estate with no invasion by the other party.” *Reeves, supra* at 494.

However, separate property may be invaded if either one of two statutory exceptions is met. *Id.*; MCL 552.23(1); MCL 552.401. The exceptions exist to provide for circumstances where, after division of marital property, one party is left with insufficient assets necessary for suitable support and maintenance; i.e., one party shows additional need, MCL 552.23(1), or where one party “contributed to the acquisition, improvement, or accumulation of the property.” MCL 552.401.

Plaintiff argues that there was no marital estate, and therefore, the trial court erred when it distributed property to defendant that was not part of the marital estate. Plaintiff is correct that there was no marital estate from which the trial court could distribute property to defendant. The trial court determined that the home was plaintiff’s separate property and stated that the “only significant asset is the home, which was clearly purchased by Plaintiff before the marriage and held in his sole name.” While the timeshare was determined to be joint property, its value was offset by the parties’ \$16,000 joint credit card debt, and therefore, the marital estate had no net value. All other assets were found to be plaintiff’s property.

However, the court did not err when it distributed property to defendant from plaintiff’s separate estate because defendant demonstrated additional need, and hence, met the first statutory exception, MCL 552.23(1), that allows for the invasion of plaintiff’s estate. Specifically, MCL 552.23(1) states:

Upon entry of a judgment of divorce or separate maintenance, if the estate and effects awarded to either party are insufficient for the suitable support and maintenance of either party and any children of the marriage as are committed to the care and custody of either party, the court may further award to either party the part of the real and personal estate of either party and spousal support out of

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<sup>1</sup> MCL 552.19 provides:

Upon the annulment of a marriage, a divorce from the bonds of matrimony or a judgment of separate maintenance, the court may make a further judgment for restoring to either party the whole, or such parts as it shall deem just and reasonable, of the real and personal estate that shall have come to either party by reason of the marriage, or for awarding to either party the value thereof, to be paid by either party in money.

the real and personal estate, to be paid to either party in gross or otherwise as the court considers just and reasonable, after considering the ability of either party to pay and the character and situation of the parties, and all the other circumstances of the case.

As found by the trial court, plaintiff was the owner of an established business that grossed anywhere from \$100,000 to \$200,000 annually, while defendant was unemployed and living in an apartment with her son. According to the court, if each party kept their own separate estates, as plaintiff suggested, defendant would be left destitute.

Plaintiff also says that defendant failed to provide the proofs required for the application of statutory exceptions to the doctrine of noninvasion of separate assets. Plaintiff claims that no evidence was presented, such as bills, expenses, earning statements, or bank balances, to demonstrate defendant's additional need. However, plaintiff cites no authority that defendant was required to submit evidence of bills, expenses, earnings history, or bank balances. Furthermore, evidence was presented that defendant had no assets. The parties' combined total assets at the time of their separation were the home, the vacation timeshare, Gregg's caulking business, a Ford F-150, a Ford Expedition, and some recreational vehicles. Defendant left the marital home with only the Expedition, which she later sold, and all other property belonged to plaintiff. At the time of trial, she was involuntarily unemployed and living in her adult son's apartment.

Plaintiff also claims defendant provided no evidence regarding any increase in value in the home during their 17-month marriage. However, the trial court did not find that defendant met the second statutory exception, MCL 552.401,<sup>2</sup> and therefore, the amount the home appreciated during the 17-month marriage was irrelevant. Plaintiff further asserts that there was no evidence that defendant contributed to the growth of plaintiff's business. Again, because the trial court based the award on the first exception, MCL 552.23, and not MCL 552.401, evidence showing appreciation of plaintiff's business was unnecessary. Therefore, the trial court did not err in its fact-finding.

Plaintiff maintains that the trial court erred by considering the parties' period of cohabitation in its application of equitable principles for the division of marital property. A trial

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<sup>2</sup> MCL 552.401 provides:

The circuit court of this state may include in any decree of divorce or of separate maintenance entered in the circuit court appropriate provisions awarding to a party all or a portion of the property, either real or personal, owned by his or her spouse, as appears to the court to be equitable under all the circumstances of the case, if it appears from the evidence in the case that the party contributed to the acquisition, improvement, or accumulation of the property. The decree, upon becoming final, shall have the same force and effect as a quitclaim deed of the real estate, if any, or a bill of sale of the personal property, if any, given by the party's spouse to the party.

court can in fact consider a parties' period of cohabitation when making an equitable distribution of property, per *Spark's* factors eight and nine.<sup>3</sup> However, when first making a determination of separate and marital estates, the trial court may only allocate to the marital estate increases in the value of pre-marital assets to the extent that the pre-marital assets appreciated during the marriage. *McNamara, supra* at 183-184. Here, the trial court did not allocate any appreciation in plaintiff's home or business to the marital estate. Rather, the trial court found that plaintiff owned separate property, and then invaded plaintiff's property based on defendant's demonstration of additional need. Thus, the trial court did not improperly consider the period of cohabitation in its equitable distribution of property.

Plaintiff also argues that the trial court erred when it applied the factors relevant to the division of property in its invasion of plaintiff's separate estate. Plaintiff incorrectly argues that a trial court may only consider *Sparks* factors when determining the division of marital property and not when invading separate property. As recently stated by this Court, "a court may use *any property of either party* to achieve just and reasonable property division *after considering the character and situation of the parties, and all the other circumstances of the case.*" *Pickering v Pickering*, 268 Mich App 1, 8; 706 NW2d 835 (2005) (emphasis added). Accordingly, the trial court properly applied the *Sparks* factors in its decision to invade plaintiff's separate property. Thus, the trial court's distribution of assets was fair and equitable in light of its findings of fact.

Affirmed.

/s/ Peter D. O'Connell  
/s/ Henry William Saad  
/s/ Michael J. Talbot

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<sup>3</sup> *Sparks, supra* at 159-160, provides, upon the division of marital property:

The following factors are to be considered wherever they are relevant to the circumstances of the particular case: (1) duration of the marriage, (2) contributions of the parties to the marital estate, (3) age of the parties, (4) health of the parties, (5) life status of the parties, (6) necessities and circumstances of the parties, (7) earning abilities of the parties, (8) past relations and conduct of the parties, and (9) general principles of equity. There may even be additional factors that are relevant to a particular case. For example, the court may choose to consider the interruption of the personal career or education of either party. The determination of relevant factors will vary depending on the facts and circumstances of the case. [Citation omitted.]